U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30992586

Date: JUL. 10, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center initially approved the petition. However, the Director subsequently revoked the approval, determining the Petitioner had not satisfied the initial evidentiary criteria, of which he must meet at least three. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

With respect to revocations, section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." Regarding revocation on notice, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the Director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. A beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

II. ANALYSIS

The Petitioner did not initially indicate or establish that he has received a major, internationally recognized award, but sought to satisfy at least three of the ten alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Ultimately, the Director approved the petition in February 2017. On July 6, 2021, the Director issued a notice of intent to revoke (NOIR), which the Petitioner responded

on a timely basis. In the NOIR, the Director noted concerns with the documentation submitted with the initial petition and how it did not satisfy the initial evidentiary requirements to demonstrate the Petitioner qualifies for classification as an individual of extraordinary ability in accordance with 203(b)(1)(A)(1) of the INA.

In response, the Petitioner maintained that he meets the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) related to receipt of awards (i); memberships (ii), published materials (iii), original contributions of major significance (v), scholarly articles (vi), evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation (viii), and, high salary (ix). The Director did not find the Petitioner's response to the NOIR persuasive and revoked the approval of the petition in October 2023.

A NOIR "must include a specific statement not only of the facts underlying the proposed action, but also of the supporting evidence." *Matter of Estime*, 19 I&N Dec. at 452. USCIS must also provide a petitioner with a written decision "that explains the specific reasons for the revocation." 8 C.F.R. § 205.2(c). A conclusory statement supports neither a NOIR's issuance nor revocation of a petition's approval. *Matter of Arias*, 19 I&N Dec. 568, 570 (BIA 1988).

The Director found that the Petitioner did not fulfill at least three of the ten regulatory criteria. In the revocation, the Director did not acknowledge the Petitioner's submission of documentation and did not explain why the evidence did not overcome the grounds in the NOIR. In addition, the Director did not address the Petitioner's arguments made in response to the NOIR. Here, the Director did not provide the Petitioner sufficient information that specifically explained the proposed grounds for revocation.

As the record does not sufficiently explain the Director's finding regarding the Petitioner's claimed extraordinary ability, we will remand the matter. On remand, the Director should reconsider the Petitioner's qualifications for the requested immigrant visa category. If the Director believes that the Petitioner has not established his claimed extraordinary ability, the Director should issue a new NOIR explaining the evidentiary deficiency and allowing the Petitioner an opportunity to respond. If supported by the record, a new NOIR may include any additional potential revocation grounds. The Director, however, must afford the Petitioner a reasonable opportunity to respond to all issues raised on remand. Upon receipt of a timely response, the Director should review the entire record and issue a new decision.

Furthermore, the Director noted in the decision that the Petitioner failed to provide a properly certified translation of the documents submitted in support of the evidentiary criteria and therefore, service of the documentation submitted in response to the NOIR was not probative. The Director noted that the single-page affidavit of translation of foreign documents did not meet the standard set out in 8 C.F.R. § 103.2(b)(3) because a single translation certification that does not specifically identify the document[s] it accompanies does not meet the requirements of the regulation.

On appeal, the Petitioner contends he submitted the required translation as outlined in 8 C.F.R. § 103.2(b). The Petitioner explains that the affidavit submitted in response to the NOIR contained the language, "All Chinese documents listed in the [redacted] NOIR response (I-140) for beneficiary [the Petitioner] are true and accurate renditions into English from the Chinese originals,"

and therefore covered all translated documents. On appeal, the Petitioner submits an updated affidavit by the same translator attesting the truth and accuracy of the translation of all evidence submitted in response to the NOIR and provided a list of all documents translated by the translator. A remand is further warranted in this case because the Petitioner submits new evidence on appeal which is material to the claim that he submitted the required translations as outlined in 8 C.F.R. § 103.2(b).

III. CONCLUSION

The final revocation notice did not address the rebuttal claims and evidence the Petitioner provided. Further, Director's decision was lacking a detailed analysis of the evidence submitted in support of the claimed evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and explanation why the Petitioner did not demonstrate he satisfied these initial evidence requirements. Moreover, the Petitioner provided evidence on appeal on whether the documentation was properly translated for the Director's review. We will therefore remand the matter to the Director to issue a new NOIR, covering these issues and considering the additional arguments on appeal. Any future NOIR must include "a specific statement not only of the facts underlying the proposed action, but also of the supporting evidence." *Estime,* 19 I&N Dec. at 451.

ORDER: The Director's decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.